

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

DONALD WAYNE HEROD

§

VS.

§

CIVIL ACTION NO. 9:14cv69

WARDEN BELL, ET AL.

§

ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Donald Wayne Herod, a prisoner confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled civil rights lawsuit against several defendants. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court.

Plaintiff has filed a motion seeking a default judgment (doc. no. 15). The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this motion. The Magistrate Judge recommends the motion be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections. After careful consideration, the court is of the opinion the objections are without merit. As the defendants have not been served with process, they cannot be in default.<sup>1</sup>

ORDER

Accordingly, the objections filed by plaintiff to the Report and Recommendation are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and

---

<sup>1</sup> The court notes that the Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that this matter be dismissed for failure to state a claim upon which relief may be granted.

the report of the Magistrate Judge is **ADOPTED** as the opinion of the court. Plaintiff's motion for default judgment is **DENIED**.

So **ORDERED** and **SIGNED** this **27** day of **September, 2016**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

---

Ron Clark, United States District Judge